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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 SHELLI ROSE DEWEY,

10 Petitioner,

3:13-cv-00317-LRH-WGC

11 vs.

ORDER

12 CAROLYN MYLES, *et al.*,

13 Respondents.
14 _____/

15 In this habeas corpus action, brought by Nevada prisoner Shelli Rose Dewey, the court, on
16 October 29, 2015, granted in part and denied in part a motion to dismiss made by the respondents.
17 *See* Order entered October 29, 2015 (ECF No. 47). In that order, the court ruled that four of the
18 claims in Dewey's amended habeas petition -- Claims 5A, 5B, 5C and 5D -- are unexhausted in state
19 court. *See id.* The court, therefore, ordered Dewey to make an election, to either abandon the
20 unexhausted claims, or move for a stay of this action so that she may exhaust them in state court.
21 *See id.* at 14-15. The court warned Dewey that if she did not, within the time allowed,
22 file a notice of abandonment of her unexhausted claims, or a motion for a stay, her entire amended
23 habeas petition would be dismissed pursuant to *Rose v. Lundy*, 455 U.S. 509 (1982). *See id.*

24 On December 7, 2015, Dewey filed a motion for stay, requesting that this action be
25 stayed pending the conclusion of a state-court habeas action that she has filed, and that is now
26 pending, in Nevada's Fourth Judicial District Court. *See* Motion for Stay (ECF No. 50). On

1 December 23, 2015, respondents filed a response to the motion for stay, indicating their non-
 2 opposition to that motion. *See* Non-Opposition to Motion for Stay (ECF No. 51).

3 In *Rhines v. Weber*, 544 U.S. 269 (2005), the United States Supreme Court circumscribed the
 4 discretion of federal district courts to impose stays to facilitate habeas petitioners' exhaustion of
 5 claims in state court. The *Rhines* Court stated:

6 [S]tay and abeyance should be available only in limited circumstances. Because
 7 granting a stay effectively excuses a petitioner's failure to present his claims first to
 8 the state courts, stay and abeyance is only appropriate when the district court
 9 determines there was good cause for the petitioner's failure to exhaust his claims first
 10 in state court. Moreover, even if a petitioner had good cause for that failure, the
 11 district court would abuse its discretion if it were to grant him a stay when his
 12 unexhausted claims are plainly meritless. *Cf.* 28 U.S.C. § 2254(b)(2) ("An application
 13 for a writ of habeas corpus may be denied on the merits, notwithstanding the failure
 14 of the applicant to exhaust the remedies available in the courts of the State").

11 * * *

12 [I]t likely would be an abuse of discretion for a district court to deny a stay and to
 13 dismiss a mixed petition if the petitioner had good cause for his failure to exhaust, his
 14 unexhausted claims are potentially meritorious, and there is no indication that the
 15 petitioner engaged in intentionally dilatory litigation tactics. In such circumstances,
 16 the district court should stay, rather than dismiss, the mixed petition.

15 *Rhines*, 544 U.S. at 277-78.

16 Later, in the context of the procedural default doctrine, the Supreme Court held,:

17 [W]hen a State requires a prisoner to raise an ineffective-assistance-of-trial-counsel
 18 claim in a collateral proceeding, a prisoner may establish cause for a default of an
 19 ineffective-assistance claim in two circumstances. The first is where the state courts
 20 did not appoint counsel in the initial-review collateral proceeding for a claim of
 21 ineffective assistance at trial. The second is where appointed counsel in the
 22 initial-review collateral proceeding, where the claim should have been raised, was
 23 ineffective under the standards of *Strickland v. Washington*, 466 U.S. 668 (1984).

21 *Martinez v. Ryan*, 132 S.Ct. 1309, 1318 (2012). The Ninth Circuit Court of Appeals has extended
 22 the *Martinez* rule, which specifically applied to claims of ineffective assistance of trial counsel, to
 23 claims of ineffective assistance of direct appeal counsel. *See Nguyen v. Curry*, 736 F.3d 1287, 1293
 24 (9th Cir.2013).


25 In 2014, the Ninth Circuit Court of Appeals applied *Martinez* to the showing of good cause
 26 required for exhaustion stays under *Rhines*. "[W]e hold that the *Rhines* standard for [ineffective-

1 **IT IS THEREFORE ORDERED** that petitioner's Motion for Stay (ECF No. 50) is
2 **GRANTED.** This action shall be stayed, while petitioner exhausts, in state court, all her
3 unexhausted claims for habeas corpus relief. The clerk of the court shall administratively close this
4 case.

5 **IT IS FURTHER ORDERED** that, following the conclusion of petitioner's state court
6 proceedings, petitioner shall, within 30 days, make a motion to lift the stay of this action.

7 **IT IS FURTHER ORDERED** that this action shall be subject to dismissal, upon a motion
8 by respondents, if petitioner does not comply with the time limits in this order, or if she otherwise
9 fails to proceed with diligence during the stay imposed pursuant to this order.

10 Dated this 26th day of January, 2016.

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13 LARRY R. HICKS
14 UNITED STATES DISTRICT JUDGE
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